Service will provide the authorization holder appropriate advance notification of any such changes in rental fees and, where applicable, the opportunity to comment on such changes.

Forest Service Handbook 2709.11 – Special Uses Handbook, Chapter 36, Fee Determination states (of course, there are exceptions):

36.41 - Determination of Fee

Calculate the annual fee by using the fee schedule in exhibit 02 (which is issued separately as an interim directive) that provides rental rates by State, county, and type of linear right-of-way use. The annual fee is the rental rate times the number of acres. Round the acres to the nearest hundredth and round the total fee to the nearest dollar. For example, the 1991 fee for a municipal water canal located on 21.392 acres of National Forest System lands in Hood River County, Oregon, is calculated as follows:

$23.55 per acre per year x 21.39 acres = $558.84 (rounded to $559).

1. Annual Adjustments. The per-acre rental fees in the fee schedule are adjusted annually by multiplying the current year per-acre rental fee by the annual change (second quarter to second quarter) in the implicit price deflator-gross national product (IPD-GNP) index, exhibit 01 (which is issued separately as an interim directive), as published in the Survey of Current Business of the U.S. Department of Commerce, Bureau of Economic Analysis. The Washington Office Director of Lands is responsible for making annual updates to the IPD-GNP index and fee schedule.

2. Minimum Fee. Charge the Regional or Forest minimum fee when the calculated annual fee from the fee schedule is less than the minimum fee established by the Regional Forester or Forest Supervisor. For example, when the Regional Forester sets $50 as the Regional minimum fee for a special-use permit, charge the minimum $50 rather than the $20 fee calculated from the linear right-of-way fee schedule.

3. Lump-sum Fee. Calculate the annual fee amount from the fee schedule and multiply the product by the number of years for which fees are collected (sec. 32.21). For example, the 1991 annual fee amount for a water line is $60 and the special use permit provides for fee payments for 5-year periods. The fee amount would be $300 ($60 x 5 years = $300). The fee would be collected again in 1996 and would be calculated by using the adjusted values in 1996 for the next 5-year period.

The Forest Service and the Bureau of Land Management have coordinated a website, "Communication Site Planning Forms." It is located at the following internet address: http://www.fs.fed.us/recreation/permits/commsites/comm_forms.html

The Forest Service has a brochure for the special use permit, "Obtaining a Special-Use Authorization with the Forest Service." This helpful brochure can be found at

http://www.fs.fed.us/recreation/permits/broch.htm and is reproduced here. **A** good starting place for the application process would be with the local National Forest Service office.

Obtaining a Special-Use Authorization with the Forest Service
The Application Process
U.S. Department of Agriculture Forest Service
Forest Service Special-Uses Program

The Forest Service manages 191.6 million acres of national forests and grasslands that comprise the National Forest System (NFS). Today, our growing population and mobile society have created a demand for a variety of uses of these federal lands. Often these diverse needs require specific approval. The Forest Service provides services that support our national policy and federal land laws. The Agency's special-uses program authorize uses on NFS land that provide a benefit to the general public and protect public and natural resources values. Currently there arc over 72,000 authorizations on the national forests and grasslands for 200 types of uses.

Each year, the Forest Service receives thousands of individual and business applications for authorization for use of NFS land for such activities as water transmission, agriculture, outfitting and guiding, recreation, telecommunication, research, photography and video productions, and granting road and utility rights-of-ways. The Forest Service carefully reviews each application to determine how the request affects the public' s use of NFS land. Normally, NFS land is not made available if the overall needs of the individual or business can be met on nonfederal lands.

·What arc special-use authorizations?
A special-use authorization is a legal document such as a permit, lease, or easement, which allows occupancy, use, rights, or privileges of NFS land. The authorization is granted for a specific use of the land for a specific period of time.

·When do I need an authorization?
I. If you will need to occupy, use, or build on NFS land for personal or business purposes, whether the duration is temporary or long tern.

2. If there is a fee being charged or if income is derived from the use

3. If an activity on NFS land involves individuals or organization with *75* or more participants or spectators.

Application Process

·Is my proposal appropriate?
1. Your request must be consistent with federal, state, and local laws, regulations, and special orders that apply to the national forests.

2. Your request must be consistent with the Forest Plan that established standards and guidelines for management of the land where the activity will take place. A copy of the forest plan is available at your local Forest Service office and in many libraries.

3. Your request must not endanger public health or safety

4. Your request must not require exclusive or perpetual use or occupancy.

5. Your request cannot conflict or interfere with administrative use by the Forest Service, other authorized existing uses, or uses of adjacent nonfederal lands.

6. The applicant must not owe any fees to the Forest Service from a prior or existing special-use authorization.

7. No gambling or providing of sexually oriented commercial services can be authorized on NFS land, even if permitted under state law.

8. No military or paramilitary training or exercises can be authorized on NFS land, unless it is federally funded.

9. No disposal of solid waste or storage or disposal of radioactive or other hazardous substances can be authorized on NFS land.

·How do I apply?

1. Contact a Forest Service office and request an application. You will receive an application, depending upon your requested use. Application information is also available on the special uses home page at **http:l/www.fs.fed.us/recreatiodpermits**

2. Prior to submitting the proposal, you are required to arrange a preapplication meeting at the local Forest Service office where the use is being requested. A staff member will discuss your proposal, potential land use conflicts, application procedures and qualifications, probable time frames, fees and bonding requirements, additional coordination with other agencies, environmental reports, and field reviews.

3. Most commercial uses require additional information with the application. You may need business plans, operating plans, liability insurance, licenses/registrations, or other documents. A commercial use is when an applicant intends to make use of NFS lands for business or financial gain.

4. Complete and submit the application form, including supporting documents, to the local Forest Service office. An incomplete proposal could delay the processing.

·How do I answer all the questions?
Name and Address - Include the full name(s) to be used. If the application includes real property, the name(s) on the legal document must match the application.

Applicant's Agent - This person must be at least 21 years old and may or may not be the same as the applicant. Documentation should be included to verify that this person may sign on behalf of the applicant.

Project Description - Include enough detail to enable the Forest Service to determine feasibility, environmental impacts, benefits to the public, the safety of the request, lands to be occupied or used, and compliance with applicable laws and regulations.

Environmental Protection Plan - Include proposed plans for environmental protection and rehabilitation during construction, maintenance, removal, and reclamation of the land.

Map - Provide a detailed map (U.S. Geological Survey quadrangle or equivalent) or plat (survey or equivalent) showing the requested use in relation to NFS land, identification of applicant's property (if applicable), scale, map legend, legal description, and a north arrow.

Technical and Financial Capability - Provide documentation to assure the Forest Service you are capable of constructing, operating, maintaining, removing the use off NFS land, and reclaiming the land after the authorization terminates.

Alternatives - You must first consider using nonfederal land. Lower costs or fewer restrictions are not adequate reasons for use of NFS lands. Provide alternative locations for the proposal in your application.

What does an authorization cost?
Rental Fee - This is an annual rental fee based on the fair market value for the uses authorized and is payable in advance. Fees arc established by appraisal or other sound business management principles.

Other Associated Costs - You may be responsible for providing information and reports necessary to determine the feasibility and environmental impacts of your proposal; compliance with applicable laws and regulations; and terms and conditions to be included in the authorization.

2. Rural Utilities Service (RUS)

The RUS does not, to my knowledge, manage any federal lands. They do, however, provide funding for telephone service. One of the KUS new initiatives for 2001 was the "Local Dial-Up Internet Program." I include reference to the RUS here as a possible source of funding for the installation of hrondband services in rural areas that qualify under the Rural Utilities Service guidelines.

C. Department of the Interior

1. Bureau of Land Management

The Bureau of Land Management has the following information available on their website:

RIGHTS-OF-WAY
Each year hundreds of individuals and companies apply to the BLM for rights-of-way (ROW) on or across public lands. A ROW grant is an authorization to use a specific piece of public land for specific facilities for a specific period of time. Currently the vast majority of the ROWs granted are authorized by Title V of FLPMA (43 U.S.C. 1761-1771) and the Mineral Leasing Act (Section 28 of the Mineral Leasing Act of 1920, as amended, 43 U.S.C. 185). It is the policy of the BLM to authorize all ROW applications at the discretion of the authorized officer in the most efficient and economical manner possible.

FLPMA Rights-of-way: As authorized by the Federal Land Policy and Management Act (FLPMA), BLM will issue ROW grants for electrical power generation, transmission and distribution systems, systems for the transmission and reception of electronic signals and other means of communications, highways, railroads, pipelines (other than oil and gas pipelines) and other facilities or systems which are in the public interest.

On February 24, 2001, the issued lnstruction Memorandum No. 2001-080. The subject of this memorandum is "Rights-of-way (ROW) for Fiber Optic Uses - Interim Policies and Procedures for Application Processing, Rental Determination and Administration." The Purpose of this Instruction Memorandum was to established interim policies and procedures for processing and authorizing fiber optic ROW applications across public lands. The memorandum specifically states:

Policy/Action:

A. Interim Policy: The Bureau of Land Management (BLM) will assess a rental fee for fiber optic ROW projects based upon the current linear ROW rent schedule, as adjusted annually (43 CFR 2803.1-2), until new rental regulations for fiber optic projects can be implemented through a formal rulemaking process. Standard Stipulation No. 3 on the ROW grant form (Form 2800-14) will however continue to provide for adjustments of rent at the time that any new rental regulations are implemented and should be retained in all fiber optic ROW grants. In the interim, BLM will authorize and administer fiber optic projects, including rent determination, in accordance with this Instruction Memorandum.

Fiber optic projects, by their nature, can have a variety of owners and/or separate telecommunication service providers. Project proponents often find it economically beneficial to design and construct a fiber optic project with excess capacity (fibers, cables, conduits, and other equipment beyond the proponent's own needs which can be sold or leased to other parties). These additional users must each have their own authorization from BLM or the original ROW

grant must include a subleasing provision that authorizes additional use(s) as the need arises **(43** CFR 2801.1-1(f)).

A subleasing provision included in the ROW grant would accommodate any change in the ownership of any portion of the project, and/or the subleasing of excess space or equipment to additional providers. These additional telecommunication service providers lease excess space (and/or equipment) from the primary project owner and holder of the ROW authorization. With a subleasing provision included in the original authorization, any additional telecommunication providers would not be required to obtain a separate grant for their use. However, the holder of the ROW remains liable for compliance with the terms/conditions of the grant by all parties using the fiber optic facility.

Owners and telecommunication service providers may also sublease to a customer for that customer's own internal communication needs. **A** customer is not selling or providing a communication service to others, and would therefore never need a separate authorization from the BLM.

An inventory of re-generation equipment can assist in distinguishing between "owners", "telecommunication service providers" and "customers". "Owners" and "telecommunication service providers" would typically have their own, separate, re-generation equipment, housed in their own building, to service their own equipment and business needs. In some cases, the holder will lease excess rack space in a re-generation facility to accommodate the re-generation equipment of an additional telecommunication service provider. "Customers" would not have separate re-generation equipment for their use. Field Offices (FO) should periodically inventory re-generation stations and equipment to help determine the number of separate owners and/or third-party telecommunication service providers for a particular fiber optic project, to assist in management of the right-of-way authorization.

B. New Authorizations

1. Preferred Authorization: Issue a single ROW grant with subleasing provision.

Because of the many benefits which subleasing provides to the BLM and the ROW holder, it is the preferred policy of BLM to issue a single ROW grant (Form 2800-14), with a subleasing provision, for all new fiber optic projects. Grants would include, but are not limited to, the following terms and conditions:

a. **A** provision to allow subleasing of space/equipment to additional telecommunication providers without further approval from *the* BLM. Subleasing includes any change in ownership of any portion of the project, or the subleasing of space to additional telecommunication service providers. These additional telecommunication providers will not be required to obtain a separate grant for their use. No additional rent will be assessed to the ROW holder for the additional sublease owner(s) or telecommunication provider(s) within the project or facility. The

holder is liable and responsible for compliance with all terms/conditions of the grant, including compliance with the terms/conditions by any additional user.

b. A provision which obligates the holder to notify BLM of any change in the future ownership status of the fiber optic project, or the subleasing to separate telecommunication service providers.

c. A ROW width that adequately accommodates the project, but not less than 10 feet.

d. A ten year maximum term.

e. A provision to allow the BLM to adjust the rent, consistent with regulations and rental schedules. Standard Stipulation No. 3 (RENTAL) on Form 2800-14 provides for such an adjustment and should be retained in all ROW grants.

f. Collection of an advance annual (or other term as specified in the grant or via regulatory provisions) rent that is determined by using the existing linear rent schedule. The ROW grant will be issued as an actual rent grant, and not as an "estimated rent" grant.

The holder will be assessed an annual rent that is determined by using the existing linear rent schedule found at 43 CFR 2803.1-2(c). The authorized ROW area shall include an appropriate width to accommodate the construction, operation/maintenance and termination of all components of the project, including all conduits, marker poles, maintenance stations, in-line amplifiers, and re-generation facilities. A short term ROW grant may be issued to accommodate temporary construction activities.

g. The holder must amend the ROW grant at any time additional land, equipment, and/or new uses are proposed which are beyond the scope of the existing authorization.

2. Importance of the pre-application meeting with the fiber optic project proponent(s).

FO's must explain to the proponent the financial obligations associated with processing a ROW application, and the potential monitoring costs and rental obligations if the application is approved.

3. ROW Application Requirements

The fiber optic project proponent must submit a completed application on Standard Form 299 in accordance with the provisions contained in 43 CFR 2802.3 and 2802.4. The project proposal must specifically describe in detail (preferably in a Plan of Development) the components of the fiber optic facility and/or system, including but not limited to, the size, number, and type of conduits, innerducts, cables, and fibers. The proposal must include a specific description (by project segment) of the number of fibers in each conduit or innerduct, and the use (commercial. public purpose, or internal) and ownership of fibers (via a fiber content map). If the RO'W is

granted, it must contain a stipulation or provision which requires the holder to provide an updated fiber content map (including the number of active and installed but inactive fibers) on an annual basis. Finally, the project proposal must describe all ancillary components, including but not limited to, re-generation stations (number of individual sites and individual re-generation facilities at each site, distance between sites, access and power requirements, fencing needs, etc.), in-line amplifiers, fiber-splicing vaults (man-holes and/or hand-holes), and warning markers.

4. Alternative Authorization: Issuance of a new ROW grant without a subleasing provision

For administrative efficiencies, issuance of one ROW grant per fiber optic project (with subleasing provisions) as described above, is BLM's preferred policy. However, BLM, at its discretion and at the request of the proponent/applicant, may issue a ROW grant for a fiber optic project without subleasing provisions. If only one entity is involved, BLM shall condition the grant and inform the applicant of the following:

a. Future desires to sublease any portion of the fiber optic project must be approved in advance by BLM.

b. The ROW grant will require an amendment to authorize any future subleasing.

c. All amendments to the ROW grant will be subject to cost recovery fees.

d. In lieu of an amendment that provides for subleasing, each additional owner and/or telecommunication service provider must obtain their own separate authorization which would be subject to rent based upon the current linear rent schedule. A proposed new owner would also need to submit a request and receive BLM approval for a full or partial assignment of the grant from the original ROW holder.

For multiple-owner projects that do not desire the subleasing provision, individual ROW grants without a subleasing provision can be issued to each separate owner or telecommunication service provider involved in the project in order to accommodate the needs of that specific business transaction, When one project has two or more ROW grants to accommodate different ownership entities or telecommunication service providers, rent is assessed to each holder based upon the existing linear rent schedule.

C. Existing Authorizations

1. Single Owner Projects Authorized Without Subleasing Provisions.

Many of the existing fiber optic projects that BLM has authorized to date have not included a subleasing provision which allows additional users without BLM approval. Rent has been assessed based on the existing linear rent schedule. Some of these existing authorizations were issued subject to an "estimated rent". again based upon the current linear rent schcdule. Any

ROW grant with an "estimated rent" provision must be revised to eliminate the "estimated rent" provision. In addition, any future request by the holder to accommodate either additional owners or telecommunication service provider(s), must be approved by BLM and authorized by either:

a. Issuance of a separate ROW grant to each new owner(s) or telecommunication service provider(s), or

b. Amending the original grant **to** allow for "subleasing" of equipment and space within the authorized facilities. If the grant is amended to provide for subleasing, the holder must agree to notify BLM of any change in the ownership status of the fiber optic project, or whenever space has been subleased to additional telecommunication service providers.

2. Multiple Owner Projects Authorized Without Subleasing Provision

a. Infrequently, ROW grants are held jointly by two or more entities, but the holders would be considered a single entity for rental determination purposes. For example, Companies **A,** B, & C may own equal shares of a ROW project and hold the ROW grant "jointly" or "in common". While each company is individually liable and responsible for compliance with all terms and conditions of the ROW authorization, for rental determination purposes, treat the grant as a single, one-entity authorization and establish rent by using the current linear rent schedule.

b. Instead of one ROW grant held in "joint ownership", companies may have been issued their own ROW grant for that portion of the project that they have an ownership interest. In these cases. use the current linear rent schedule to determine rent for each authorization holder.

D. Installation within an Existing Transportation or Utility ROW Authorization: BLM will issue a new ROW grant when a fiber optic use is proposed for installation within an existing transportation or utility ROW authorization (including Federal Aid Highway projects), unless the authorization provides for the subleasing of new uses (specifically fiber optic uses) without additional approval.

However, no approval or authorization is necessary from BLM for any new use (including fiber optic projects) proposed within a pre-Federal Land Policy Management Act (FLPMA) railroad ROW (Reference Solicitor's Opinion, M-36964, and memo to State Offices dated July 7, 1999, from the Assistant Director, Minerals, Realty and Resource Protection).

Whenever a pre-FLPMA railroad ROW becomes abandoned and the ROW reverts to public land status, non-railroad uses also terminate. Therefore, existing non-railroad uses previously authorized by the holder of the railroad grant must be re-authorized by BLM.

E. Installation of a Fiber Optic Project on Existing or within Existing and/or Proposed ROW Facilities (whose primary use is something other than fiber optic telecommunications): BLM will encourage holders of existing ROWs, to the greatest extent practical, to accommodate the placement of fiber optic projects within their ROW,

BLM will also encourage fiber optic project proponents/applicants to locate, to the greatest extent possible, their fiber optic project within existing ROWs.

Fiber optic projects to be installed on an existing (or proposed) utility structure whose primary use is something other than fiber optic telecommunications (i.e., electrical transmission power line or a pipeline for petroleum products, etc.) will require a separate ROW grant for the fiber optic use. The grant shall include a subleasing provision and be issued subject to rent as explained in Section B. above. The ROW width for the fiber optic project can vary from that of the primary use, but can not be less than ten feet. The term of the authorization for the fiber optic ROW grant will not exceed 10 years.

F. Authorization, Construction and Installation of Empty Fiber Optic Conduits: **A** fiber optic project that is authorized and/or constructed with empty conduits (no fiber optic cables) is considered a single line when determining rent under the existing linear rent schedule. Rent is determined in accordance with Section B. above.

G. Application of Policy to Holders Exempt From Rent: **All** holders who utilize fiber optic lines for commercial purposes are subject to rent in accordance with the existing linear rent schedule, unless they are specifically exempted from rent by statute or regulation, including facilities that are eligible for financing pursuant to the Rural Electrification Act of 1936, as amended (43 **U.S.C.** 1764 and **43** C.F.R. 2803.1-2(b)(1)(iii)).

Rent-exempt holders who lease/sell excess capacity for commercial purposes to other telecommunication service providers that are not exempt from rent by statute or regulation, lose their exemption for that portion of the fiber optic project being sold or leased for the commercial purposes. Given this exception, rent is determined in accordance with Section B. above.

H. Interagency Projects: Many of the major fiber optic projects being proposed to the BLM and the Forest Service (FS) include lands administered by both agencies. When such a fiber optic project is proposed, both agencies have typically collaborated and agreed upon a lead agency. The lead agency processes the application and oftentimes authorizes the project. This is a sound management practice that shall continue. FO's shall continue to make the lead agency determination based upon the nature of the project, its impact to the land and resources, issues or concerns about the proposal, availability of resources to process the application, and customer service to the applicant. (Refer to BLM Manual 2801.35B.1.f. (Coordination) for further guidance on determination of a lead agency).

Until a fiber optic rental regulation is adopted, the BLM and the FS have agreed that the land use rent for interagency projects will be determined in accordance with the existing linear ROW rent schedule found at 43 CFR 2803.1-2 (c).

I. Alternative Rent Determinations: The BLM will not apply the criteria found at **43** CFR 2803.1-2(c)(1)(v) to deviate from the current linear rent schedule in favor of an appraisal or other method to determine rent. However, many companies have indicated that they prefer to

make a one-time rent payment rather than annual payments. To accommodate these requests, the BLM will consider alternative methods to establish fair market value rent, but only when requested by the applicant and approved by the BLM.

The applicant may request an appraisal to establish fair market value rent for a fiber optic project, subject to the following terms and conditions:

1. BLM and the applicant must jointly agree to establish rent via an appraisal.
2. **An** appraisal provided by the applicant must be approved by the BLM.
3. **An** appraisal provided by the BLM must be accepted by the applicant.
4. All BLM appraisal and review work must be funded by the applicant via cost recovery.
5. Once an acceptable rent has been determined, the applicant can choose to pay the rent on a one time basis for the term of the grant; or as otherwise provided by regulations.
6. Rent established by an appraisal (or by negotiations based on relevant market data) will be considered actual rent for the full tern of the grant.
7. Once a revised rental schedule is adopted by regulation for fiber optic uses, it can not be applied to ROW grants where actual rent has been paid for the full term of the grant.

J. Rent Reduction and Appeal Rights: With the concurrence of the State Director, the authorized officer may reduce rent when it is determined that payment of full rent will cause undue hardship on the holder/applicant and that it is in the public interest to reduce said rental. This "hardship" provision is found at 43 CFR 2803.1-2(b)(2)(iv). Appeal rights (under 43 CFR part 4) are available to all holders whose rent is determined by the existing linear rent schedule.

K. LR2000 Notations: **A** new commodity code (972) has been established to identify ROW uses for fiber optic facilities and to track these uses within LR2000. Please refer to WO Instruction Memorandum No. 2000-171, dated August 4,2000, for guidance on the use of this new commodity code.

Timeframe: This IM is effective upon receipt.

Budget Impact: The application of this policy will have a minimal impact on budget and workload, The current linear ROW rental fee schedule will continue to be used, until new rental regulations are developed and implemented through a formal rulemaking process. However, there is a positive impact through the implementation of consistent procedures in the processing of fiber optic rights-of-way under existing regulations.

Background: The Bureau of Land Management (BLM) is receiving, processing and authorizing a growing number of proposals for the installation of fiber optic telecommunication lines across public lands. As a result of this ongoing activity, a number of questions have been raised by FO's regarding the authorization and administration of ROW applications and grants for fiber optic projects, and specifically, the determination and assessment of appropriate rent.

A growing volume of data indicates that the market value of fiber optic ROWs may exceed the annual land use rental rates in the existing linear ROW rent schedule found at 43 CFR 2803.1-2(c). In the last year or so, the BLM has routinely authorized projects and assessed an "estimated" rent, based upon the current linear rent schedule, while awaiting development of internal policy or regulations which would establish a rent schedule for fiber optic projects. Recently, BLM made an agreement with Congressional leaders that any new rent schedule for fiber optic uses would only be established via the regulatory process with full public participation.

It is to the benefit of both the BLM and the FS, as well as the customers we serve, that consistent policies and procedures be developed for the authorization and administration of fiber optic projects now located or proposed to be located on both the public lands and National Forest System lands. The BLM and FS have thus agreed to conduct a market study of fiber optic uses, with the objective of establishing a market based schedule of rates and/or methods that can be easily and consistently used by field managers in determining and assessing a fair market rent for fiber optic projects.

Manual/Handbook Sections Affected: BLM Manual 2801, ROW Management and Handbook H-2801-1, is affected by this IM and policy.

Coordination: The development of this policy was coordinated within the Department, and at the Director and Assistant Director level. BLM State Office and FO were contacted for input. Considerable Congressional interest has been expressed regarding the development of fiber optic ROW policies and numerous briefings of Congressional staff has been facilitated by the BLM Washington Office (WO), Legislative Affairs staff.

Contact: Any questions concerning the content of this IM should be directed to the WO, Lands and Realty Group (WO-350) and the attention of Ron Montagna, at (202) 452-7782 or Bill Weigand, at (208) 373-3862.

This memorandum is available on the BLM website at the following internet address: http://www.blm.gov/nhp/efoia/wo/fy01/im2001-080.html. This memorandum expires on September 20, 2002.

In summary, the BLM has a current rent schedule that applies specifically to fiber optics. It is Appendix **A.**

2. Bureau **of** Reclamation

The Bureau of Reclamation has similar rcquiremcnts for the installation of fiber optics – yearly "fee" based upon the fair market value of the land in the casement or right-of-way; and the initial costs ofthc department paid for by the permittee. More information is available at the Bureau of Reclamation's web site.
Bureau of Reclamation

In response to the question, "What is the Bureau of Reclamation?", the Bureau of Reclamation responds with the following answer found at the Bureau of Reclamations web site located at http:/lwww.usbr.gov/main/what/index.html:

> Established in 1902, the Bureau of Reclamation is best known for the dams, power plants, and canals it constructed in the 17 western states. These water projects led to homesteading and promoted the economic development of the West. Reclamation has constructed more than 600 dams and reservoirs including Hoover Dam on the Colorado River and Grand Coulee on the Columbia River.
>
> Today, we are the largest wholesaler of water in the country We bring water to more than 31 million people, and provide one out of five Western farmers (140,000) with irrigation water for 10 million acres of farmland that produce 60% of the nation's vegetables and 25% of its fruits and nuts.
>
> Reclamation is also the second largest producer of hydroelectric power in the western United States. Our 58 power plants annually provide more than 40 billion kilowatt hours generating nearly a billion dollars in power revenues and produce enough electricity to serve **6** million homes.
>
> Today, Reclamation is a contemporary water management agency with a Strategic Plan outlining numerous programs, initiatives and activities that will help the Western States, Native American Tribes and others meet new water needs and balance the multitude of competing uses of water in the West. Our mission is to assist in meeting the increasing water demands of the West while protecting the environment and the public's investment in these structures. We place great emphasis on fulfilling our water delivery obligations, water conservation, water recycling and reuse, and developing partnerships with our customers, states, and Indian Tribes, and in finding ways to bring together the variety of interests to address the competing needs for our limited water resources.

As with the other federal agencies, permits for easements and right-of-ways are authorized in various titles and sections of the Code ***of*** Federal Regulations. The Bureau of Reclamation has manuals and directives that provide the governing rules and regulations.

One of the directives and standards deals with Land Use Authorizations. This documents stated purpose is to "provide standard procedures for issuing use authorization documents such as casements, leases, licenses, and permits which allow others to use Reclamation lands and interests in its lands, facilities, and water surfaces."

Section *3* subsection G covers Commercial Telecommunjcations. This *section* covers the implementation of the Telecommunications Act of 1996. This section refers back to the General Services Administration **(GSA)** Bulletin, Federal Property Management Regulations (FPMR) D-242. As with other federal land easements or other land use permits, the fee is determined on the fair market value, unless there is a competitive bid process. In general, the tern of the permit or easement is to be no longer than 25 years. Easements arc only used when some lesser use for authorization, like a lease, license or permit does not suit the purpose of the applicant.

Easements should only be granted for uses which require an "interest in land" and will not interfere with other projects. Leases are used for such activities as grazing, agriculture, research, recreations, and concessions. The majority of applicants will be issues permits and licenses. Section 7 – Permit/License states, "Construction or placement of transmission or distribution lines, access roads, trails, pipelines, power lines, telephone lines, and other facilities involving installation or construction of longer-term capital improvements are the types of uses authorized through a longer term license." Section 7 further states, **"All** licenses, including permits, should be limited to a period of 25 years or less."

Section 9 – **Use** Authorization Fees and Financial Management states, "All use authorizations involving Reclamation acquired or withdrawn lands have a land use value ()referred to as ''value of rights-of-use" in **43** CFR Section **429)** and an administrative cost.." The monies received by Reclamation for the land use values are also referred to as land use feed s and are considered "incidental revenues…the administrative costs are those direct and indirect costs associated with approving and administering the use authorization."

The Bureau of Reclamation Directives and Standards LND 05-01, which "sets forth appraisal procedures and standards to ensure compliance with Federal authorities, establishes directives and standards for written appraisals, and provides a system for resolution *of* appraisal problems and issues."

In conclusion, once a permit has been granted, there is the ongoing fee for the use of the land, using the fair market value to determine that fee, and there is also the initial expenditure for the recovery of the administrative costs.

The following is from the Bureau of Reclamation's web site at the following web address: **http://www.lc.usbr.gov/g2000/flands.html**

Land Operations and Realty

The Land Operations and Realty program supports the Reclamation mission by acquiring and administering land that is needed to allow construction and operation of Reclamation facilities including dams, canals, power plants, reservoirs, pumping plants, underground pipelines, electrical transmission lines, office buildings, and other supporting and related structures and facilities.

When projects arc transferred to other entities, or retired and dismantled, Lands disposes of unneeded property.

Major Lands Function: Acquisition, Administration, Recreation, Land Disposal, Land Records, and More About Recreation.

Acquisition

All projects and facilities require land on which to construct and maintain works and facilities. Projects may require large blocks of land, or small linear rights of way, and usually a combination of many types of land and land interests. Lands may be acquired from private owners and states, or in *the* western states, from the Federal public domain lands. Acquisition of

land by Reclamation and other Federal agencies is highly regulated and tightly controlled, to ensure proper use of Federal funds and fair treatment of landowners.

A recent need has developed for Reclamation to acquire environmental mitigation lands. These lands, rather than being used directly for construction of facilities, and acquired and set aside and preserved for their natural values, often wildlife habitat. Preservation of these lands is needed to allow Reclamation *to* comply with laws like the Endangered Species Act, to offset possible environmental impacts of traditional water and power projects.

Administration

Good business practices - and Federal law - require that Reclamation-owned lands be properly managed. This requires continual inventory and inspection of lands. Reclamation must also protect and administer many resources on the lands, including wildlife, forest products and other vegetation, valuable minerals, cultural and historic properties, among others. This involves ongoing work to protect lands from erosion, wildfire, and other threats.

A major and growing problem on Reclamation lands, especially in areas near rapidly growing urban and suburban areas, is trespass. Trespasses from minor refuse dumping to encroachment of fences and buildings to serious illegal toxic waste dumping can be seen on lands throughout Reclamations systems. Protection of lands from damage and trespass, and clean-up and rehabilitation of damaged lands is an increasing demand on Reclamation's resources.

Non-Reclamation project **uses** are third party needs **for *use* of** Reclamation **lands.** For example, authorization of a highway **right of way** crossing a Reclamation owned canal. Reclamation makes every attempt to accommodate the needs of the public and local communities for use of Reclamation lands, so long as the use would not damage project facilities. Reclamation routinely issues permits, rights of way, leases, and other rights of use for a multitude of uses. Proper management of these activities requires a broad mix of technical specialists, including realty specialists, appraisers, land surveyors, inspectors, engineers, and cartographers.

Recreation

Many Reclamation facilities, especially reservoirs, provide excellent opportunities to provide public recreation opportunities and development. Reclamation projects have resulted in the creation of hundreds facilities throughout the West such as campgrounds, picnic areas, boat ramps, hiking and biking trails, wildlife observation areas, and other amenities. Generally, Reclamation seeks out local government partners, such as state and county park departments, to operate these facilities on a concession basis, which significantly reduces administration costs for the Federal government. In other cases, Federal agencies such as the US Forest Service or National Park Service administer recreation use of Reclamation projects.

Land Disposal

Lands no longer needed for project purposes are identified for disposal. Reclamation sometimes sells land itself, but often works with the General Services Administration (GSA) to dispose of surplus lands through GSA processes. In some cases, Reclamation lands originally withdrawn from the public domain are returned to other Federal land managing agencies holding adjoining lands, or certain lands may be transferred to state or local agencies, if appropriate.

Reclamation in recent years has placed emphasis on transferring some entire projects to the local entities (usually irrigation or water districts) which operate them, a process referred to as "Title Transfer." In these cases, ensuring that the transfer documents adequately protect both the transferee entity and the Federal government requires the work of many experienced lands professionals and attorneys.

Land Records

Perhaps the single most significant functional responsibility of the Lands Operations and Realty program is the creation, maintenance, and protection of accurate, detailed land records. The failure to maintain good land records can result in inefficient administration and slow response to public demands, at best. At worst, it can jeopardize the integrity of vital water projects and result in untold unnecessary costs to the Federal government through imperfect title and tort liability costs. Reclamation maintains hundreds of thousands of land records spanning almost a century of water development in the West. These records were generally in traditional paper media. Many are deteriorating rapidly due to age, and some have been lost or damaged to the extent they must be recreated, a costly and time-consuming process. Reclamation has been working hard in past years to protect the information in these records, and to make it more accessible, through use of electronic information management technology. These new records media include computer database systems for storing text and tabular data, graphic systems for storing images of original documents, and geographic information systems (GIS) for storing map-based data.

D. National Park Service

Here are the regulations for special use permits in the national park system. Of special note is that no permits are given for areas designated wilderness. Once again, a permit is required and a yearly fee is assessed based upon fair market value. The cost for the implementation of the permit is also required – the permittee must pay the administrative costs involved with issuing the permit.

DIRECTOR'S ORDER #53: SPECIAL PARK USES

Approved: /s/ Robert G. Stanton (signed original on file)
Director, National Park Service

Effective Date: April 4, 2000
Sunset Date: April 4, 2004

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1. INTRODUCTION

A special park use is a short-term activity that takes place in a park area and:

Provides a benefit to an individual, group or organization, rather than the public at large;
Requires written authorization and some degree ofmanagement control from the NPS in order to protect park resources and the public interest;
Is not prohibited by law or regulation; and
Is neither initiated, sponsored, nor conducted by the NPS.

The approval or denial of requests to engage in special park uses is an important and continuing responsibility of superintendents. Superintendents should be aware that local decisions related to permitting special park uses may have Service-wide implications, and set precedents that create difficulties for other superintendents. In such instances, the superintendent should consult with the regional or Service-wide specialist.

A special park use may involve either rights or privileges, and may or may not support the purposes for which a park was established. In either case, whether the request is approved or denied, the superintendent's decision must be able to withstand review, challenge and litigation. Whether the request is approved or denied, the superintendent's decision must be consistent with service-wide

policies and consistent with decisions made on both a park and on a service-wide basis. The judicial standard of review is whether the decision is "arbitrary and capricious."

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (16 USC 590l), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (16 USC 460l-6a), any recreation use covered by the Recreational Fee Demonstration Program (16 USC 4601-6a Note), any leasing activity pursuant to the National Historic Preservation Act (16 USC 470h-3), or Section 802 of the National Parks Omnibus Management Act of 1998 (16 USC 1a-2(k)).

2. AUTHORITIES

2.1 The authority to issue this Director's Order is contained in 16 USC 1 through 4, and in delegations of authority contained in Part 245 of the Department of the Interior Manual.

2.2 The 1916 NPS Organic Act and a 1978 amendment to the NPS General Authorities Act place limits on the kinds of activities that may be allowed within the National Park System. The most important provisions read as follows:

[The National Park Service] shall promote and regulate the use of the [national parks] by such means and measures as conform to the fundamental purpose of the said parks.. ., which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 USC 1).

The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress (16 USC 1a-1).

These provisions of law place obligations on the National Park Service to manage use of park areas in a manner that will protect against the impairment or derogation of park resources, values and purposes.

2.3 Superintendents must be able to cite a specific right or statutory authority to allow a special park use. Rights may include those granted under the Constitution, or through treaty or property entitlements. Statutory authorities include general statutes (e.g., 16 USC 1), or a park-specific statute. In addition to rights or statutory authorities, managers must also consider Executive orders, regulations, and case law to determine whether a proposed activity or special park use is allowed. Examples of authorities most frequently cited for special park uses are:

16 USC 1 - 4, for general uses
16 USC Sand 79, for rights of way

Examples of authorities for charging fees and recovering costs related to special uses are:

16 USC 3a, for cost recovery
31 USC 9701, for fee collection
(See also section 10.1.)

3. POLICY GUIDANCE

Primary policy guidance on special park uses is contained in section **8.6** of NPS Management Policies. That guidance is summarized in, and supplemented by, this Director's Order.

3.1 General. The National Park Service may permit a special park use if the proposed activity will not:

Cause injury or damage to park resources; or
Be contrary to the purposes for which the park was established; or
Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
Substantially impair the operation of public facilities or services of NPS concessioners or contractors; or
Present a clear and present danger to public health and safety; or
Result in significant conflict with other existing uses.
A superintendent must deny initial or renewal requests upon finding that any of the above conditions will not be met. Existing activities that do not meet these conditions must be phased out.

3.2 Mandatory or Discretionary Some special park uses are specifically authorized in a park area's enabling legislation, which may indicate that permitting is mandatory ("The Secretary shall permit ..."), or discretionary, ("The Secretary may permit ..."). In either instance, the proposed use is considered to be both authorized and appropriate, as long as adequate safeguards are established to protect park resources, values, and visitors.

3.3 Right or Privilege. **A** superintendent must determine whether a request for a special park use is prohibited or mandated, or involves a right or a privilege. **A** right is based on property ownership, legislative or treaty entitlement, or Constitutional guarantee. Where none of these factors is present, the use is a privilege over which the superintendent may exercise varying degrees of discretion and control. Generally speaking, citizens must be afforded the opportunity to exercise their rights; however, a superintendent may establish permit conditions to protect park visitors, park resources and values. When considering a privilege, the superintendent has the additional task of determining whether the activity will be allowed.

3.4 Compliance. The decision to issue or deny a permit for a special park use flows from the appropriate compliance under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act of 1966 (NHPA), and other applicable laws. For example in the case of NEPA, if the proposed special use is not covered by a categorical exclusion, the superintendent, in preparing an EA or

EIS, is responsible for identifying reasonable alternatives, both inside and outside the park, and completing appropriate compliance documentation. Although the superintendent may require the applicant to prepare this documentation, the NPS remains responsible for its content. Regardless of who prepares compliance documents, the applicant is responsible for paying all NPS costs incurred in meeting NEPA and 106 compliance requirements.

3.5 Permit Terms and Conditions. Superintendents will establish permit conditions that protect NPS and public interests, including park resources and values. Special park uses may be authorized for a period of not-to-exceed 5 years. Rights-of-way are addressed separately and may be issued for longer than 5 years. (See Section 10.)

3.6 Permit Fees and NPS Cost Recovery Except as identified in Section 3.7 below, the NPS will charge fees and recover costs for special use permits unless prohibited by law or Executive order, or when the proposed use is protected by the First Amendment or involves another right and not a privilege. Charges should reflect the fair market value of the use requested. The fair market value of a special park use is the value of the lands or facilities used, plus the NPS costs incurred in managing or supporting the use. The NPS will retain funds recovered for the cost of managing a special park use. Charges arising from the use of NPS lands and facilities must be deposited in the U. S. Treasury, unless otherwise specifically authorized by law.

When special use permit fees are proposed to be increased, the superintendent will notify the permittee and/or the public of the increase at least sixty (60) days prior to the fee changes taking effect. (See 3.12 below. See also Reference Manual 53 Chapter 10.)

3.7 Permit Fee Waivers. A waiver from the requirements to charge permit fees and to recover costs may be appropriate when:

Charging and collecting are not cost-effective;
A waiver is considered an appropriate courtesy to a foreign government or international organization;
The permittee is a state, local, or Federal agency or Native American tribe or group; or
The superintendent determines that the proposed use will promote the mission of the NPS or promote public safety, health, or welfare.

3.8 Recreation Fees and Non-Recreation Uses. Special park use permittees who enter a park for recreational purposes are subject to the same entrance fees, recreation use fees, and recreation permit fees as the general public. However, persons engaging in special park uses that are not recreational in nature are exempt from entrance fees. Examples include but are not limited to: First Amendment; agricultural; grazing; filming activities; NPS authorized research; Federal, state and local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes.

3.9 Fees Charged by Permittee. A permittee, while on park property, may not collect admission or any other money associated with a special event. **All** permittee monetary transactions must take place outside the park.

3.10 Donations. The NPS has authority to accept donations, but not to solicit donations. Therefore, NPS managers will not initiate discussion of a possible donation with any permit applicant. In addition, the applicant must not be approached by a representative of a cooperating association, friends group, or other park partner for a donation while the application is being considered, the permit is being negotiated, or the permitted activities are ongoing.

An applicant's offer of a donation to the park must not in any way influence the superintendent's decision to issue or deny a permit, nor may it influence the manner in which a permit is administered. If a permit applicant voluntarily indicates an interest in making a donation to the park, the superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept donations in lieu of recovering costs.

*3.*11 Administrative Record. Superintendents must develop an appropriate administrative record to support their decisions. The information must be in writing and, depending on the sensitivity of the matter, contain the dates, discussions, and rationale involved in the decision process and the determination of all fees. In addition, the administrative record must contain all letters, compliance documentation, notes, and other documents related to the issuance of the permit, including a copy of the executed permit. Permits issued without fees or cost recovery will be retained in the park files for 1 year and 1 day following expiration of the permit. Permits issued with fees or cost recovery will be retained in park files for 6 years and 3 months following expiration of the permit.

3.12 Renewals. Superintendents must carefully review each permitting instrument for a special park use prior to renewal. A request for renewal should he considered as carefully as if it were an initial application. The review should take place before the existing permit expires, and must ascertain the continuing validity of the original findings as well as the Administrative Record of what has taken place since those findings. The review will determine whether the activity is still mandated or legally permissible, and whether it continues to be appropriate and compatible with the purposes of the park. The Renewal Flow Chart found in Reference Manual 53 Chapter 8 should be used for this purpose.

4. PERMITTING INSTRUMENTS

4.1 There are two instruments that may he used to authorize a special park use: (1) a Special Use Permit, or (2) a Right-of-way Permit.

(1) Special Use Permit. Instrument issued by a superintendent to an individual or organization to allow the use of NPS-administered resources and to authorize activities in 36 CFR Parts 1 - 7 that require a permit. (See Reference Manual 53.)

(2) Right-of-way permit. Instrument issued by a regional director to authorize any new utilities, including water conduits, on NPS lands. This includes those utilities not owned by the NPS, hut serving the NPS and/or NPS concession facilities.

Superintendents may, as appropriate, renew, amend, or convert other documents to right-of-way permits for existing utilities. Right-of-way renewals and conversions may be signed by the superintendent.

NPS-owned utilities do not require a right-of-way permit, nor is one required when the specific use is authorized by a property right, such as a deeded easement, or by park-specific or other legislation when the statutory language is so written as to have the same effect as a deeded easement.

A right-of-way permit does not grant any interest in the land, and is a revocable permit issued at the discretion of the NPS.

When the right-of-way permit format prescribed by Reference Manual 53 is used without substantive changes, it does not require further review by the Solicitor.

4.2 Other Permits. NPS issues other permits and signed agreements, including but not limited to research, collection, and use of natural and cultural resources. Requirements for these permissions are found in other Director's Orders and related Reference Manuals (such as DO #24 NPS Museum Collections Management, DO #28 Cultural Resource Management, and DO #77 Natural Resources).

5. PERMITTING AND RENEWAL CONSIDERATIONS

5.1 Reasons for Issuing a Permit. There are three primary reasons for issuing a permit, regardless of type:

To impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established;
To obtain the signature of the permittee agreeing to the conditions and other statements contained within the document; and
To establish a written account of the special use for inclusion in the administrative record.

5.2 Basic Requirements. To receive consideration, a proposal to engage in a special park use must be submitted in writing; be consistent with applicable legislation, Federal regulations and administrative policies; avoid visitor use conflicts; and should not create unacceptable impacts to park resources. (See 3.1.)

5.3 Administrative Record, Special park uses do not have to be allowed simply because a request has been made and discretionary authority for such use exists. The need to develop a rationale for the approval of each special park use request is as important as it is for the denial of such requests. The decision to approve or deny a special park use should be based on objective data and recorded in the administrative record

5.4 Flow Chart. superintendents must follow the "Flow Chart For Special Park Use Initial Requests" (see Reference Manual 53 Chapter 8) to ensure that all requirements of law, regulation, and NPS policy are addressed. Any special park use that is approved must be documented in writing, have a specific date for expiration, contain safeguards for the protection of the park's resources and values, and have an adequate administrative record.

5.5 Termination. Occasionally, activities or uses that passed an initial evaluation are no longer permissible. If a previously-permitted activity is found to be without legal authorization, or is judged to be no longer appropriate and compatible with current policy or the purposes of the park and additional stipulations would not mitigate enough to make it appropriate, it must be terminated.

6. PERMIT PROVISIONS

Superintendents will ensure that measures to protect the United States' interests are incorporated into permits for special park uses. To ensure this protection, superintendents will include in each permit issued some, or all, of the following items, depending on the activity. (The following items, however, may not be imposed on First Amendment activities.)

6.1 Performance Bonds. Performance bonds or deposits are the permittee's guarantee of compliance with permit conditions and reimbursement to the park for damage to resources and/or facilities as a result of the permittee's activities. An amount adequate to cover the cost of restoration, repair, rehabilitation and cleanup of the area may be required. Should resource damage beyond that envisioned by the original performance bond result from the permittee's use, the park may file suit against the permittee under the authority of 16 U.S.C. 19jj, Park System Resource Protection.

6.2 Liability Insurance. Liability insurance protects the government from negligent actions by permittees. Insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit.

6.3 Property Insurance. Adequate property insurance coverage should be required whenever Federal buildings and/or facilities are being made available pursuant to a permit.

6.4 Hold Harmless/Indemnification. This is a legal statement intended for use as a condition of a permit. It states that the Federal government, its agents and employees, cannot be held liable for claims for damages or suits for any injuries or deaths from any cause occasioned by the permittees' occupancy and use of the land included within the permit.

6.5 Tort Claim Provision. This statement is used in lieu of an indemnification requirement when issuing permits to other Federal agencies. While it is directed mostly at the occupancy of NPS property by the other agency, it might be used for other purposes.

6.6 Anti-Deficiency Act. This statement protects the NPS against claims arising from an executed Agreement, which would be in excess of the fiscal year appropriation for that agreement.

6.7 Bankruptcy Termination. While this statement is primarily aimed at agricultural Special Use Permits, it might be appropriate under other circumstances and other instruments, depending on the use. Its purpose is to prevent the park or park lands from being claimed as an asset or becoming involved in any part of a settlement if the permittee becomes involved in bankruptcy proceedings.

7. NATIVE AMERICAN RIGHTS

The NPS, to the extent consistent with each park's legislated purposes, will develop and execute its programs in a manner that reflects knowledge of and respect for the cultures - including religious and subsistence traditions - of Native American tribes or groups with demonstrated ancestral ties to particular resources in parks.

The NPS will be as unrestrictive as possible in permitting Native American access to and use of traditional sacred resources for customary ceremonials, provided that such use does not cause derogation of the resources.

The NPS will permit members of Native American tribes or groups to have access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

Members of Native American tribes or groups may enter parks for traditional non-recreational activities without paying an entrance fee.

8. FIRST AMENDMENT ACTIVITIES

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

8.1 General. Freedom of speech, the press, religion, and assembly are rights, not privileges. However, the courts have recognized that activities associated with the exercise of these rights may be reasonably regulated to protect legitimate government interests. Therefore, in order to protect park resources, the NPS may regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which they are conducted. NOTE: It is the conduct associated with the exercise of these rights that is regulated, and never the content of the message. There are also First Amendment issues associated with photography and filming activities addressed later in this Director's Order. NPS regulations pertaining to First Amendment activities are found at 36 CFR 2.51 and 2.52, or at 36 CFR 7.96(g) for designated **park** units in the National Capital Region.

8.2 Religion. The First Amendment also prohibits the government from supporting or promoting a particular religion, religious view, or religious organization. However, it does not prohibit the National Park Service from permitting religious activities in park areas, in the same way as the Service would permit the exercise of any other First Amendment activity.

8.3 Equal Protection. The principle of equal protection, guaranteed by the due process clause of the Fifth Amendment, provides that, to the extent any particular activity is permitted, similar First Amendment activities may not he excluded. Therefore, any restraints imposed must be administered even-handedly to all groups and individuals for activities similarly situated. The NPS may not permit one group to engage in conduct while prohibiting others under similar circumstances. Superintendents must be

particularly careful to be neutral in their judgment, and not to favor organizations with which they are personally familiar, or whose "message" they privately support.

8.4 Political Events. Political events may be either First Amendment activities or special events. Typical examples of First Amendment events include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of non-First Amendment events include political fund-raisers and other by-invitation-only political events not normally open to the general public. In addition to all the normal considerations involved in allowing special events in the parks, superintendents must take into consideration whether or not the activity would be permitted if requested by any other group.

9. WATER RIGHTS

Special park uses may involve the use and/or conveyance of water. Water law, both Federal and state, governs the manner, timing, and amount of use that any party, including the National Park Service, may make of any water body, including both surface and ground water. If a water use is not authorized under either Federal, state, or common law, then such use will not be permitted in an NPS unit.

Policy and additional laws specific to the National Park Service govern the **sale,** or other form of disposal, of water from Federal lands administered by **the** NPS. The general thrust of these laws and policy is that the NPS has no excess or surplus water and that water cannot be sold, given away, or otherwise provided for non-NPS use except under very limited circumstances.

Specific guidance on the sale or lease of services, resources, or water available within an area of the National Park System is available from the Water Resources Division, Water Rights Branch.

(See also Director's Order #35: Sale or Lease of Services, Resources, or Water.)

10. RIGHTS-OF-WAY

10.1 Authorities. The NPS may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to such use of NPS lands. Authority for a utility Right-of-way (ROW) through parks is found in 16 USC 5 for radio, television and other forms of communication transmitting and receiving structures, facilities and antennas (including telecommunication antenna sites); and 16 USC 79 for electric power, telephone and telegraph lines, and a wide variety of water conduits (including sewer); or in a very few cases, park-specific legislation.

Guidance for authorizing roads and highways in NPS areas is found in Director's Order #87. Authority for highways that are pan of the Federal Aid Highway System is found at 23 USC 317. Authority for permitting access to in-holdings in Alaska park units was granted by Public Law 96-487, title XI, §1110(b)(16 USC 3170(b)) .

Examples of uses for which there are no general authorities are roads that are not a part of the Federal Aid Highway System (National Highway System). and oil, gas, or other petroleum product pipelines.